

(ryu)

HOWARD TRAPP
Howard Trapp Incorporated
200 Saylor Building
139 Chalan Santo Papa
Hagåtña, Guam 96910
Telephone (671) 477-7000

Attorney for defendant
Eric John Tudela Mafnas

FILED
Clerk
District Court

JAN 19 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERIC JOHN TUDELA MAFNAS, et
 al.,

Defendants.

Case No. CR 04-00038

MEMORANDUM
ON JURISDICTION

Defendant Eric John Tudela Mafnas appeals to the United States Court of Appeals for the Ninth Circuit from an order entered in this action on the 9th day of January, 2006. (Notice of Appeal (filed Jan. 19, 2006).) The order denies a motion made

COPY

(MEMORANDUM ON JURISDICTION)**Case No. CR 04-00038**

by Mafnas to dismiss the indictment. (Order Denying Motion to Dismiss Indictment at 2 (filed Jan. 6, 2006).) The ground on which the motion was made was that Mafnas already has been punished for the offenses charged, and for that reason a punishment of Mafnas other than and in addition to the punishment which he has already received is barred, as it would be violative of the double jeopardy guarantee of the Fifth Amendment to the Constitution of the United States. (Motion by Defendant Eric John Tudela Mafnas to Dismiss the Indictment at 1-2 (filed Dec. 21, 2005).)

The Court ruled, "Defendants were unable to supply to the court any authority whatsoever that a permissible post-conviction, pre sentencing remedy for alleged constitutional violations is dismissal of the indictment against them." (Order Denying Motion to Dismiss Indictment at 2 (filed Jan. 6, 2006).) This does not mean, however, that Mafnas's claim is not colorable. A claim is "colorable" if it has "some possible validity." (*United States v. Camacho*, 413 F.3d 985, 987 n.1 (9th Cir. 2005)) ("Camacho's claim has 'some possible validity' and is in that sense 'colorable.'" *United States v. Sarkisian*, 197 F.3d 966, 983 (9th Cir. 1999). We therefore have interlocutory jurisdiction, *see id.*, and we reject the government's argument to the contrary") .) A claim is at least colorable

(MEMORANDUM ON JURISDICTION)
Case No. CR 04-00038

when it presents a question of first impression. (*United States v. Lewis*, 368 F.3d 1102, 1107 (9th Cir. 2004) ("Lewis's claim is colorable only because it raises two issues of first impression"), *cert. denied*, 543 U.S. 1053 (2005); see *United States v. Price*, 314 F.3d 417, 420 (9th Cir. 2002) (Price's "position is without merit. However, it is an issue of first impression in this circuit and raises at least a colorable issue").)

Inasmuch as the appeal is from the denial of a double jeopardy motion, and because Mafnas's claim is at least colorable, the filing of the notice of appeal divests this Court of jurisdiction. (*United States v. LaMere*, 951 F.2d 1106 (9th Cir. 1991).)

Dated, Hagåtña, Guam.

January 19, 2006.

Respectfully submitted,


HOWARD TRAPP
Attorney for defendant
Eric John Tudela Mafnas

(DOCUMENTS/MemoJuris.EMafnas)

DECLARATION OF SERVICE

I, Reina Y. Urbien, declare that I am an administrative assistant employed in the office of Howard Trapp Incorporated, Howard Trapp, Esq., the attorney for defendant Eric John Tudela Mafnas herein, and that I served the document to which this declaration is annexed on the following:

Timothy E. Moran, Esq., Assistant United States Attorney, by transmitting a facsimile thereof to him at (670) 236-2985 and by mailing a copy thereof to him at P.O. Box 500377, Saipan, MP 96950, his last known facsimile telephone number and mailing address, respectively, all on January 19, 2006; and

G. Anthony Long, Esq., the attorney for defendant Charlie Kintaro Patris, by transmitting a facsimile thereof to him at (670) 235-4802 and by mailing a copy thereof to him at P.O. Box 504970, San Jose, Saipan, MP 96950, his last known facsimile telephone number and mailing address, respectively, all on January 19, 2006.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2006, at Hagåtña, Guam.


REINA Y. URBIEN